RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the courts. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

ATTACHMENT — DELIVERY BOND. — Defendant, the owner of attached property, executed to plaintiff, the attaching creditor, a delivery bond, the obligation of which was that the attached property should be properly kept and taken care of, and delivered on demand to the marshall to satisfy any judgment rendered, etc., or that the defendant might sell the same and pay the appraised value thereof. *Held*, that accidental destruction by fire while the property was in the possession of the defendant was no defence to any action on the bond. *Doggett, Bassett & Hills Co.*, v. *Black et al.*, 40 Fed. Rep. 439 (Ind).

CONFLICT OF LAWS — LIMITATION OF ACTIONS. — An action of tort for negligence was brought in Georgia, under a statute of Alabama, where the injury happened. The statute prescribed no period of limitation. *Held*, where a right of action for a tort is given by a statute of another State, and no period of limitation is prescribed otherwise than the general law of limitation prevailing in that State, the *lex fori* and not the *lex loci* applies on the subject of limitations. *O'Shields* v. *Georgia Pac. Ry. Co.*, 10 S. E. Rep. 268 (Ga.).

CONSTITUTIONAL LAW — INTERSTATE COMMERCE. — Intoxicating liquors transported from another State to a point in Kansas are subject to the laws of Kansas relating to the sale and disposition thereof, to the same extent as are other intoxicating liquors already rightfully existing in the State, and cannot be sold at the place of destination, in the original packages or other form, for use as a beverage. The police powers of the State, so exercised, does not infringe on the power of Congress to regulate interstate commerce. *State* v. *Fulker*, 22 Pac. Rep. 1020 (Kan.).

CONSTITUTIONAL LAW — REGULATION OF INTERSTATE COMMERCE. — Natural gas when brought to the surface and placed in pipes for transportation is an article of commerce; and an act of a State legislature, making it unlawful for any person, natural or artificial, to conduct natural gas from the State is legislation on interstate commerce and unconstitutional. "It is not a regulation . . . designed to secure the health, safety, or comfort of the citizens of the State. . . . The object is to keep natural gas within the State." It is therefore not a valid exercise of the police power, but an interference with the right of Congress to regulate interstate commerce. *State ex rel. Corwin* v. *Ind. & O. Oil, Gas, and Mining Co.*, 22 N. E. Rep. 778 (Ind.).

CONTRACTS — ILLEGALITY — CONTRACT TO INFLUENCE LEGISLATION. — Plaintiff and defendant entered into this contract: the plaintiff promised that it would not apply to the Legislature for a land grant, and that it would assist the defendant in getting a grant; the defendant promised that, in case the effort to secure a grant were successful, it would give the plaintiff a part of the land, as compensation for the plaintiff's assistance; there was a stipulation that the means to be used in securing the grant should be reasonable and proper. *Held*, the contract is void as against public policy. *Chippewa Valley & S. Ry. Co.* v. *Chicago, St. P., M., & O. Ry. Co. et al.*, 44 N. W. Rep. 17 (Wis.).

CONTRACTS — PARTIAL PERFORMANCE — BREACH — QUANTUM MERUIT. — The plaintiff contracted with defendant county to construct certain cells in the county jail; he was to furnish materials of a certain kind, and to do the work in a certain specified way. He completed the work, but failed to comply with the contract in certain particulars; part of the job was perfectly well done; the defective part could be remedied so as to make the entire job conform to the contract. *Held*, the plaintiff can recover on a *quantum meruit*; so far as the work was well executed, the county, though it has not accepted the work, has received a benefit, which it cannot restore without material injury to the building, as the work done is become a part of the realty. The measure of damages is the contract price less damages to the defendant for breach of contract. *Ætna Iron & Steel Works* v. *Kossuth County*, 44 N. W. Rep. 215 (Ia.).

CONTRACTS — REMEDIES FOR BREACH AFTER PART PERFORMANCE. — Defendant hired the plaintiff for one year at a salary of $400 payable monthly, and turned her off at the end of two months. Plaintiff sued in *quantum meruit* and recovered two months' salary. She now sues in *assumpsit* for the wrongful dismissal. *Held*, that, having considered the contract as rescinded in the first action, the plaintiff cannot now treat it as continuing. *Keedy* v. *Long*, 18 Atl. Rep. 704 (Md.)

CONVERSION — RIGHTS OF SUCCESSIVE EQUITABLE ASSIGNEES. — Plaintiff undertook to prosecute a claim by U. against Z., under a contract by which plaintiff was to receive one-third of whatever was obtained, U. retaining the right to compromise the claim if he thought best. Afterwards U. assigned the claim to S., who was ignorant of plaintiff's contract, as collateral security for a debt. The plaintiff was prosecuting the claim by suit; but S., U., and Z., without his knowledge, compromised it. By this settlement S. released U., and U. released Z. from their respective debts, upon the delivery by Z. to S., through U's agent, of certain non-negotiable bonds. This action is against the executor of S. for the value of one-third of these bonds. *Held*, plaintiff is entitled to recover. *Fairbanks* v. *Sargent*, 22 N. E. Rep. 1039 (N. Y.).

The argument of the court is, that, by the contract, the plaintiff became equitable assignee of one-third of the claim, and by the subsequent assignment S. obtained an equitable right to the remaining two-thirds. That when Z. transferred the bonds to U.'s agent, the plaintiff and U., by force of their contract, became tenants in common at law, and when S. received and retained all the bonds he converted the plaintiff's third. S. is not a second assignee who has first reduced the *chose* in action to possession.

CORPORATIONS — LIABILITY FOR THE NEGLIGENCE OF ITS OFFICERS — FRAUD BY AGENT. — Plaintiff purchased of a broker shares of stock which the treasurer of the company had authorized the broker to sell for him. The treasurer then issued to plaintiff the number of shares called for by the power of attorney, which the latter obtained from the broker, and also transferred the shares to the plaintiff on the company's books. These shares were a fraudulent over-issue, the treasurer filling out blank certificates which the president of the company had signed and left with him. *Held*, the corporation was liable in damages to the plaintiff, as the negligence of its officers, in not examining the books, made the fraud possible. *Allen* v. *South Boston R. R. Co.*, 22 N. E. Rep. 917 (Mass.)

CORPORATIONS — RIGHT TO HOLD LAND. — Bill in behalf of a corporation to recover lands which had been conveyed to defendants with the intention that they should be for the benefit of the corporation. The defence set up was that plaintiff had no authority under its charter to hold the lands. *Held*, that the defence was available. "While a court might hesitate to declare the title to lands received already and in the possession and ownership of the company void on the principle that it had no authority to take such lands, it is very clear that it will not make itself the active agent in behalf of the company, in violating the law, and enabling the company to do that which the law forbids." *Case* v. *Kelly et al.*, 10 Sup. Ct. Rep. 216.

CORPORATIONS — TAXATION FOR DEBTS. — Debts due to a corporation, when made the subject of taxation, can be assessed only in the State of incorporation; and debts due from citizens of another State cannot be taxed in that State, although the corporation has complied with a provision in the constitution of that State to the effect that all foreign corporations dealing therein must have a known place of business in such State and an authorized agent upon whom process may be served. *Barber Asphalt Paving Co.* v. *City of New Orleans*, 6 So. Rep. 794 (La.).

EQUITY JURISDICTION — ENFORCING COVENANTS OF INFANTS. — An infant, in deed of apprenticeship, covenanted not to enter into professional engagements without her master's consent. A motion for a preliminary injunction was made. *Held*, that, as the infant could not be sued upon the covenant, an injunction would not be granted to restrain her from commiting a breach of it, or to restrain the other defendants from employing her professionally. *Francesco* v. *Barnum*, 38 W. R. 187 (Eng.).

EQUITY JURISDICTON — SPECIFIC PERFORMANCE OF CONTRACTS. — Plaintiff (vendee) and defendant (vendor) entered into a contract in writing, whereby

defendant agreed that he would convey a parcel of land to the plaintiff, upon full performance by the plaintiff of his side of the contract. Before the time for performance on the part of the plaintiff it was orally agreed that the defendant should make certain improvements on the land, for which the plaintiff was to pay. Defendant made improvements to the amount of $500. This sum, by agreement, did not fall due till three years after plaintiff filed his bill. The plaintiff is insolvent; he has performed his side of the written contract in full. *Held*, the case shows no ground for refusing specific performance; the considerations which will justify a court of equity in refusing specific performance of a contract to sell land must have some reference to the contract itself; the possibility that when this $500 becomes due the defendant may not be able to collect it does not make it inequitable to enforce this contract. *Thompson* v. *Winter*, 43 N. W. Rep. 796 (Minn.).

FEDERAL COURTS — EXCLUSIVE JURISDICTION OVER PROPERTY IN THE CUSTODY OF THE COURT. — Where property has been levied on to satisfy a judgment in a federal court, it is thereby brought within the custody of the court, and by the death of the debtor before its sale a State court does not acquire probate jurisdiction to administer on it as part of the debtor's estate. *Rio Grande R. R. Co.* v. *Vinet*, 10 Sup. Ct. Rep. 155.

HUSBAND AND WIFE — EFFECT OF ARTICLES OF SEPARATION. — Articles of separation, by which the husband and wife agree to live apart thereafter, and the husband agrees to pay money annually to a trustee for the support of the wife and children, are valid. The obligation to make such payments continues after the wife has obtained a divorce without alimony. *Clarke v. Fosdick*, 22 N. E. Rep. 1111 (N. Y.).

If the wife obtains a divorce after such agreement, the court will not allow her alimony. *Galusha* v. *Galusha*, 22 N. E. Rep. 1114 (N. Y.).

Follett, C. J., dissented in both cases.

HUSBAND AND WIFE — ENFORCING CONTRACT BETWEEN IN EQUITY. — A husband was excluded by will from any share in his father's estate, and what would naturally have come to him was given to his wife to support herself and children. The husband and wife separated, but he advanced to her at different times money for the support of herself and children, and she made a written contract to reimburse him out of her share in his father's estate. *Held*, the contract was void at law, yet since it was fair and just equity will enforce it. There is no moral reason for forbidding a wife to contract that she shall contribute out of her separate estate to the support of the family. *Hendricks* v. *Isaacs*, 22 N. E. Rep. 1029 (N. Y.).

The case was sent back to the surrogate for further proceedings on other grounds.

HUSBAND AND WIFE — RIGHT TO SUE FOR ENTICING AWAY HUSBAND. — At common law a wife has a right of action against a person who entices away her husband. *Bennett* v. *Bennett*, 23 N. E. Rep. 17 (N.Y.).

INFANCY — GUARDIAN AD LITEM — VACATING JUDGMENT. — A statute provided that where an infant of fourteen or over is defendant, the summons shall be delivered to him personally, and that he shall appear by guardian to be appointed by the court. A summons was delivered to an infant over fourteen; he did not appear, and no guardian *ad litem* was appointed; judgment upon default was rendered against him. *Held*, the judgment was erroneous, but not void; only voidable. It is the duty of the infant, within a reasonable time after he comes of age, having knowledge of the judgment, to take steps to avoid it. *Eisenmenger* v. *Murphy et al.*, 43 N. W. Rep. 784 (Mich.).

INSURANCE — WAGER POLICY. — One W., the holder of a mutual benefit society certificate, payable at his death to his estate, sold the same to plaintiff, who had no insurable interest in W.'s life. The society assented to the transfer, and issued a new certificate, naming the plaintiff, as beneficiary therein. Plaintiff paid the premiums till W.'s death, and received the amount of the certificate from the society. *Held*, that he could retain the money as against W.'s next of kin, notwithstanding the assignment was void as a wager policy. *Stoelker* v. *Thornton*, 6 So. Rep. 680 (Ala.).

NEGLIGENCE — CONTRIBUTORY. — A city ordinance prohibited the use of certain neutral ground in a street for vehicles. Plaintiff, the driver of a fire-engine, while on the way to a fire, drove across this neutral ground, and was injured by

guy wires stretched across it by the defendant, at a height sufficient to injure only persons passing in carriages. *Held*, that he was not guilty of contributory negligence. *Wilson* v. *Gt. Southern Telephone & Telegraph Co.*, 6 So. Rep. 781 (La.).

QUASI-CONTRACT — FAILURE OF CONSIDERATION. — The defendant bought land of the plaintiff and gave in payment a note. Later it was discovered that the land belonged to the defendant at the time the contract was made. In an action on the note the court held that the plaintiff could not recover, as there was no consideration. *O'Neal* v. *Phillipps*, 10 S. E. Rep 352 (Ga.).

The same question would have arisen if the defendant had paid in cash instead of giving a note and had sued to recover the money. It is interesting to note that the rule *caveat emptor* did not apply.

QUASI-CONTRACT — MISTAKE OF FACT — FORGED CHECK. — The defendant bank discounted a forged check drawn on the complainant, with whom they kept an account. The defendant bank sent this check to the complainant bank, whereupon the complainant credited the defendant with the amount. Some time after the forgery was discovered, and the complainant demanded that the defendant make it good. On refusal a bill is filed to recover the amount as having been paid through mistake. *Held*, that the complainant could recover. *People's Bank* v. *Franklin Bank*, 12 S. W. Rep. 716 (Tenn.).

This case goes on the same reasoning as that on which *Bank* v. *Bangs*, 106 Mass. 441, was decided. The defendant bank had not exercised the diligence and prudence on which the defendant might well rely.

A Massachusetts decision in the case of *Bank of Danvers* v. *Bank of Salem*, as yet unreported, is to the same effect on facts precisely like those of the principal case.

REAL PROPERTY — CONSTRUCTIVE ADVERSE POSSESSION — EVIDENCE OF PRIVITY. — To establish continuity of constructive adverse possession, a written instrument is necessary, but it need not have all the requisites of a valid deed. The lack of a seal will not invalidate it for this purpose. *Kendrick* v. *Latham*, 6 So. Rep. 871 (Fla.).

This case follows *Crispen* v. *Hannaven*, 50 Mo. 536, but seems contrary to *Simpson* v. *Downing*, 23 Wend. 316, in which case the deed in question was void on its face, not being executed by a party required by a surrogate's order to unite in the execution The court in the latter said that "a deed or some instrument sufficient in form for the purpose of carrying title" is essential to establish such continuity of constructive adverse possession.

REAL PROPERTY — DEED OF LUNATIC. — The defendant's grantor bought land of a person whom he knew to be a lunatic. The defendant was a *bona fide* purchaser for value without notice. The contract of sale made with the lunatic was perfectly fair and just. *Held*, the title of the defendant was good against the heirs of the lunatic. *Odom* v. *Riddick*, 10 S. E. Rep. 609 (N. C.).

The deed of a lunatic is not void, but voidable, 2 Blackstone, 295. In some jurisdictions it is placed on the same ground as infancy; and it is held that the deed will be avoided without a return of the consideration even if the conveyance was obtained in good faith, for a sufficient consideration, and in ignorance of the insanity of the grantor, *Gibson* v. *Loper*, 6 Gray, 279, *Hovey* v. *Hobson*, 53 Me. 451; but in many jurisdictions the consideration must be returned before the conveyance will be avoided, *Molton* v. *Camroux*, 2 Ex. 487, *Scanlan* v. *Cobb*, 85 Ill. 296, and cases cited. In North Carolina the conveyance will not be avoided unless the lunatic has been imposed upon, *Riggan* v. *Green*, 80 N. C. 286, even if the grantee knew of his insanity. *Odom* v. *Riddich*, *supra* (*semble*).

SLANDER OF TITLE PRIVILEGED COMMUNICATION. — A published statement that the publication of certain books, by the plaintiff, is an infringement of the copyright, under which defendants publish the same books, is *prima facie*, privileged. To destroy the privilege it is not sufficient to show that the copyright is in fact invalid. Express malice by defendants must be shown. *Lovell Co*, v. *Houghton*, 22 N. E. Rep. 1066 (N. Y.).

STATUTE OF LIMITATIONS — BONDS. — Action was brought in 1885 on a bond that became due in 1877. To a plea of the Statute of Limitations the plaintiff replied the payment of interest within six years, *i.e.*, in 1880. *Held*, that the bar of the statute was not removed by part payment in case of bonds. "In actions on simple contracts . . . it was held that inasmuch as the promise to pay, express or implied, was the gist of the action, therefore any promise within the statutory period might be assumed to be the promise sued on, . . . and that a new promise was in support of, and not a departure from, the declaration."

"This reasoning is not applicable to actions of debt upon specialties. In such actions the declaration is directly on the obligation contained in the instrument, . . and can not be sustained upon any subsequent promise of less solemnity." The simple promise to pay the debt, implied from the payment of interest, is merged in the higher obligation. *Toothaker* v. *City of Boulder*, 22 Pac. Rep. 468 (Col.).

TRUSTS — BEQUESTS TO CHARITABLE USES. — This was an appeal from a decree setting aside a bequest to Henry George, for the publication and distribution of his works. The decision went on the ground that George's writings are subversive of existing laws and that their publication is not a charity. *Held*, that the education of the public is a proper charity, provided it does not tend to corruption of morals or religion and is not opposed to any legal rule, and that agitation for a change in the law is perfectly proper unless illegally conducted. The bequest was sustained. *George* v. *Braddock*, 18 Atl. Rep. 881 (N. J.).

The same point was raised in an interesting case, that occurred before the late war, *Jackson* v. *Phillips*, 9 Allen, 539, where a bequest for the publication of abolitionist literature was contested on grounds similar to those in the present case. The bequest was held valid.

WILLS — CONSTRUCTION — EVIDENCE. — Where, in a will devising all of testator's real and personal estate, the testator devises a tract of land, described as the "west half of the south-west quarter" of a certain section, evidence cannot be introduced that the testator never owned this piece, but did own the "west half of the north-east quarter" of the same section. *Sturgis* v. *Work*, 22 N. E. Rep. 996 (Ind.).

It seems that with this evidence, taken in connection with the rest of the will, the court might properly have found that there was sufficient to carry the land which the testator really owned, even omitting entirely the words of the particular description. At least, it was proper to receive the evidence, even though it might finally be decided that the will could not be construed to carry this piece of land. Although a testator in incorrectly describing his own property has accurately described something which he does not own, yet that defect may be cured by construction, as well as if the incorrect description did not accurately apply to anything else in the world. And in this case, as in all cases of interpreting a will, all material facts, other than direct evidence of the testator's intention, which are admissable under the general rules of evidence may be looked at. See Wigram, Interpretation of Wills, Prop. V.; *Creasy* v. *Alverson*, 43 Mo. 13; *Patch* v. *White*, 117 U. S. 210.

REVIEWS.

CRIME; ITS NATURE, CAUSES, TREATMENT, AND PREVENTION. By Sanford M. Green, late Judge of the Supreme and Circuit Courts of Michigan. Philadelphia: The J. B. Lippincott Co., 1889.

This is not a law-book, but was written, the author says, "in the hope that it might be of some value in aiding to solve some of the great social problems that are now agitating the civilized world." On every page we see evidence that the writer is a philanthropist, and while we may not be inclined to consider that the function of the State is so far that of a philanthropist as Judge Green suggests, it is certain that the book teems with facts and suggestions which must furnish food for considerable valuable reflection. Last year a most valuable book on this subject was published in England, written by Mr. Gordon Rylands, and bearing the same title as this work. These authors agree in the main, their few differences being traceable perhaps to the fact that Mr. Rylands views the question from the strictly economical view, in which philanthropy, as such, bears no part. As every good citizen is something of a sociologist, and as nearly all writers agree that the present system for the management of criminals is inadequate, it can be safely asserted that Judge Green's work is worthy of attention.

P. S. R.